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Attorney General v Lokman Noor bin Adam

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HIGH COURT (KUALA LUMPUR) — CRIMINAL APPLICATION NO WA-44-253–10 OF 2019
COLLIN SEQUERAH J
27 JULY 2021

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Criminal Procedure — Publishing comments — Words uttered during media statements and in police report — Sentence for contempt of court — Whether words uttered constituted threat against witness and future witnesses — Whether words uttered sought to influence outcome of trial — Whether respondent guilty of contempt of court — Rules of Court 2012 O 52 r 3(2)

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The learned attorney general ('the applicant') had brought the present contempt of court proceedings against Lokman Noor bin Adam ('the respondent') in respect of the respondent's media statements and a police report lodged by the respondent on 25 September 2019. The applicant submitted that: (a) the words uttered by the respondent constituted a threat against the witness Datuk Amhari Efendi Nazaruddin ('Amhari') who had given evidence in the 1MDB trial as well as future witnesses who may come forward to testify at the trial ('the first ground'); and (b) the words uttered sought to influence the outcome of the trial ('the second ground').

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Held, convicting the respondent, sentencing the respondent to one month imprisonment, and allowing application for a stay of sentence pending appeal:

(1) The statement filed under O 52 r 3(2) of the Rules of Court 2012 ('the said statement') only made reference to threat against Amhari and other witnesses and potential witnesses who may come forward to give evidence in the 1MDB trial but the said statement did not make reference to comments made by the respondent which intended to influence the result of the pending trial. The applicant's case of contempt stands or falls on whatever was contained within the parameters of the said statement. This was because the respondent was entitled to know the allegation against him in the clearest terms. Otherwise, the respondent would be severely prejudiced in formulating a defence or response to the allegation levelled. The said statement was akin to a charge in a criminal case, as such, there could be no room for guesswork in matters of this nature. For the above reasons, the court dismissed the second ground (see paras 18, 20 & 25–29).

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(2) In relation to the first ground, the authorities referred to were united in the stand that harassment and intimidation of witnesses both before and

after they gave evidence amounted to an interference with the administration of justice and constituted a contempt of court. Therefore, in the present case, the act of the respondent accompanied with the specific intent in making of the respondent's statement in the media and in the police report amounted to intimidation and threats against Amhari and also the prospective witnesses and future witnesses in the ongoing trial giving rise to a real risk of interference with the due administration of justice and constituted a contempt of court (see paras 44 & 65).

(3) Interference with the administration of justice was of a serious nature and could not be taken lightly. The court must sanction such action with the punishment it deserved to reflect its abhorrence of such conduct and to act as deterrent to would be offenders. The respondent also displayed no remorse and was unrepentant which was an aggravating factor. Considering all the circumstances, the court imposed a sentence of imprisonment of one month from date of conviction. The court, however, allowed an application for stay of sentence pending appeal on condition that the notice of appeal be filed within the stipulated time and the additional condition of one surety with a bond in the sum of RM3,000 (see paras 81–87).

[Bahasa Malaysia summary

Peguam Negara yang terpelajar ('pemohon') telah memfailkan prosiding menghina mahkamah terhadap Lokman Noor bin Adam ('responden') berkenaan dengan kenyataan media oleh responden dan laporan polis yang dibuat oleh responden pada 25 September 2019. Pemohon berhujah bahawa: (a) pernyataan yang dikeluarkan oleh responden merupakan ancaman terhadap saksi Datuk Amhari Efendi Nazaruddin ('Amhari') yang telah memberi keterangan dalam perbicaraan 1MDB serta bakal saksi yang mungkin akan tampil memberi keterangan pada perbicaraan tersebut ('alasan pertama'); dan (b) pernyataan yang dikeluarkan bertujuan untuk mempengaruhi keputusan perbicaraan ('alasan kedua').

Diputuskan, mensabitkan responden, menjatuhkan hukuman penjara selama sebulan terhadap responden dan membenarkan permohonan penangguhan hukuman sementara menunggu rayuan:

(1) Pernyataan yang difailkan di bawah A 52 k 3(2) Kaedah-Kaedah Mahkamah 2012 ('pernyataan tersebut') hanya merujuk kepada ugutan terhadap Amhari dan saksi-saksi lain serta bakal saksi yang mungkin tampil memberikan keterangan dalam perbicaraan 1MDB tetapi kenyataan tersebut tidak merujuk kepada komen yang dibuat oleh responden yang bertujuan untuk mempengaruhi keputusan perbicaraan yang belum selesai. Berjaya atau jatuhnya kes penghinaan pemohon bergantung ke atas apa sahaja yang terkandung dalam parameter pernyataan tersebut. Ini kerana responden berhak mengetahui dakwaan

terhadapnya dalam terma-terma yang paling jelas. Jika tidak, responden akan diprejudiskan secara serius dalam membuat pembelaan atau respons terhadap dakwaan yang dilemparkan. Pernyataan tersebut adalah serupa dengan pertuduhan dalam kes jenayah, oleh itu, tidak ada ruang untuk meneka dalam perkara seperti ini. Atas sebab-sebab di atas, mahkamah menolak alasan kedua (lihat perenggan 18, 20 & 25–29).

(2) Berkaitan dengan alasan pertama, autoriti-autoriti yang dirujuk sebulat suara dalam pendirian bahawa gangguan dan ugutan terhadap saksi-saksi sebelum dan selepas mereka memberi keterangan adalah terjumlah kepada mencampuri pentadbiran keadilan dan merupakan penghinaan terhadap mahkamah. Oleh itu, dalam kes ini, tindakan responden disertai dengan niat khusus dalam membuat pernyataan responden di media dan dalam laporan polis adalah merupakan gangguan dan ugutan terhadap Amhari dan juga bakal saksi dan saksi masa depan dalam perbicaraan yang masih berjalan membawa kepada risiko sebenar campur tangan terhadap pentadbiran keadilan yang sewajarnya dan merupakan penghinaan terhadap mahkamah (lihat perenggan 44 & 65).

(3) Campur tangan terhadap pentadbiran keadilan adalah serius dan tidak boleh dipandang ringan. Mahkamah mesti menghukum tindakan sedemikian dengan hukuman yang setimpal untuk menunjukkan kebenciannya terhadap kelakuan sedemikian dan bertindak sebagai penghalang kepada bakal pesalah. Responden juga tidak menunjukkan rasa kesal dan tidak bertaubat yang mana ini merupakan faktor pemberatan. Mengambil kira semua keadaan, mahkamah menjatuhkan hukuman penjara sebulan dari tarikh sabitan. Mahkamah bagaimanapun membenarkan permohonan penangguhan hukuman sementara menunggu rayuan dengan syarat notis rayuan difailkan dalam masa yang ditetapkan dan syarat tambahan seorang penjamin dengan bon berjumlah RM3,000 (lihat perenggan 81–87).]

Cases referred to

Achieva Technology Sdn Bhd v Lam Yen Ling & Ors [2009] 8 MLJ 625, HC (refd)

Attorney-General's Application; Attorney-General v Butterworth and others, In re [1962] 3 WLR 819, CA (refd)

Giani Ram v Ramnath Dutt AIR 1955 Rajashtan 123, HC (refd)

Lee Lay Ling v Goh Kim Nam (Cheah Pei Ching, co-respondent) [2014] 8 MLJ 805; [2013] 1 LNS 1000, HC (refd)

Monatech (M) Sdn Bhd v Jasa Keramat Sdn Bhd [2002] 4 MLJ 241

Noor Azman bin Azemi v Zahida bt Mohamed Rafik [2019] 3 MLJ 141; [2019] 3 CLJ 295, FC (refd)

R v Jason Wedlock (1995) WL 1084345 (refd)

R v Kellett [1975] 3 All ER 468, CA (refd)

Tan Sri Dato' (Dr) Rozali Ismail & Ors v Lim Pang Cheong @ George Lim &

A *Ors* [2012] 3 MLJ 458; [2012] 2 CLJ 849, FC (refd)
R v Smithers and Bowen (1983) 5 Cr App R (S) 248 (refd)

Legislation referred to

B Courts of Judicature Act 1964 s 13
Federal Constitution art 126
Rules of Court 2012 O 52, O 52 rr 3(2), 7, 8

Muhammad Shafee Abdullah (Syahirah with him) (Shafee & Co) for the applicant.

C *Gopal Sri Ram (Ahmad bin Akram, Muhammad Mustaffa Kunyalam, Deepa Nair Thevaharan and Nadia Mohd Izhar with him) (Deputy Public Prosecutors, Attorney General's Chambers) for the respondent.*

Collin Sequerah J:

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INTRODUCTION

[1] These contempt of court proceedings were instituted by the learned attorney general against the respondent abovenamed in respect of statements E made by the respondent to the media and a police report lodged by him on 25 September 2019.

BACKGROUND

F **[2]** The statements made by respondent, among other things, is alleged to contain threats against prosecution witnesses in Criminal Trial No WA-45-7–11 of 2018 and WA-45-8–11 of 2018 ('the 1MDB trial').

G **[3]** The transcript of the statements contained in a media interview is exhibited as exh A1 while the police report lodged by the respondent is exh A2 in the affidavit of Abd Hamid bin Ibrahim affirmed on 14 October 2019.

[4] The relevant contents of the police report (Sentul/018056/19) lodged H by the respondent is exhibited as exh A2 in the applicant's affidavit in support and is reproduced as follows:

> Berdasarkan keterangan Datuk Amhari Efendi Nazaruddin di Mahkamah Jalan Duta, sepanjang September lalu dalam kes 1MDB yang melibatkan Dato' Sri Najib terdapat pengakuan secara jelas yang dibuat oleh Datuk Amhari bahawa beliau I secara terang telah terlibat dalam penyalahgunaan kuasa dan rasuah. Ketika bersekongkol dengan Low Taek Jho (Jho Low) dalam melakukan penipuan dan penyelewengan sehingga mengakibatkan Dato' Sri Najib teraniaya kerana perbuatan mereka. Saya membuat laporan ini untuk meminta pihak PDRM dan SPRM untuk menyiasat beliau kerana didakwa terlibat dalam penyalahgunaan kuasa dan rasuah dalam tiga perkara berikut:

1. *Datuk Amhari mengakui beliau memiliki dan menerima gaji sebanyak RM25,000.00 sebulan dari syarikat swasta bernama ORBS Solutions Sdn Bhd semasa beliau masih bekerja sebagai penjawat awam.*

2. *Datuk Amhari mengakui di dalam Mahkamah bahawa beliau menerima dana sebanyak USD200,000.00 (RM840,000) dari Jho Low untuk membeli rumah pada tahun 2010, semasa beliau bekerja sebagai penjawat awam.*

3. *Datuk Amhari juga mengakui dihadapan yang Arif Hakim bahawa beliau teiah menerima dana sebanyak USD880,000.00 (RM3.7 juta) dari Jho Low di daiam akaun bank asing BSI Switzerland semasa beliau bekerja sebagai penjawat awam.*

Fakta-fakta yang dikeluarkan oleh Datuk Amhari sendiri di Mahkamah jelas menunjukkan bahawa beliau telah melanggar Akta SPRM serta Akta AMLA dan terlibat di dalam penyalahgunaan kuasa dan pengubahan wang haram. Adalah tiada masuk akal Dato' Seri Najib orang yang teraniaya akibat namanya digunakan oleh manusia-manusia durjana didakwa dan tercemar imejnya sedangkan mereka yang memperolehi manfaat dari pelakuan jenayah ini bebas dan tidak didakwa pula. Sekian laporan saya.

[5] Subsequent to the said police report, the respondent made a media statement where he repeated part of the matters contained in his said police report.

THE LAW ON CONTEMPT

[6] Our jurisdiction does not have a codified law on contempt. However, art 126 of the Federal Constitution and s 13 of the Courts of Judicature Act 1964 (Act 91) stipulates that the Federal Court, Court of Appeal and the High Court has the power to punish any contempt of itself.

[7] Apart from this the substantive law in respect of contempt is based upon common law.

[8] The applicable procedure with regard to contempt of court is contained in O 52 of the Rules of Court 2012.

[9] It is established that the applicable standard of proof in contempt proceedings is beyond reasonable doubt.

[10] This is because contempt proceedings are classified as being quasi-criminal in nature. This is evident from the case of *Achieva Technology Sdn Bhd v Lam Yen Ling & Ors* [2009] 8 MLJ 625 where Mary Lim JC (as Her Ladyship then was) cited the Federal Court judgment in the case of *Monatech (M) Sdn Bhd v Jasa Keramat Sdn Bhd* [2002] 4 MLJ 241

A *In the absence of a specific legislation on the contempt of court as stated earlier by us, the contempt of court in our country is guided by the common law principles*. We agree with what was stated by Sir John Donaldson MR in *A-G v Newspapers Publishing Pic* (CA), that the standard of proof is the criminal standard be it classified as 'civil contempt' or 'criminal contempt' though such classification may tend to mislead B rather than assist. Be that as it may, we are here concerned with the conduct involving an interference with the due administration of justice or the course of justice and not conduct involving the breach or assisting in the breach of a court order. *In this case the standard of proof required is proof beyond reasonable doubt*. This standard of proof had been approved by our Supreme Court in *Houng Hai Hong & Anor v MBf Holdings Bhd & Anor (and 3 Other Appeals)* [1995] 3 AMR 3079. C (Emphasis added.)

ANALYSIS, FINDINGS AND DECISION

D **[11]** The crux of the submissions by the applicant is that the contempt by the respondent is twofold in nature.

[12] Firstly, the words uttered by the respondent constituted a threat against the witness Datuk Amhari Efendi Nazaruddin 'Amhari' who had given E evidence in the 1MDB trial as well as future witnesses who come forward to testify at that trial and secondly, the words uttered sought to influence the outcome of the trial.

F **[13]** I find it convenient to deal with the second point first.

The words uttered by the respondent sought to influence the outcome of the trial

The relevant words with regard to this ground of complaint as contained in the transcript of the video (media interview) are as follows:

G (a) Because of Pakatan Harapan who wants to taint DS Najib's good reputation! Aithough we are confident, *if the court is fair then the SRC trial will be thrown into the drain!!! DS Najib will win ... 1MDB will also be thrown into the drain!!! DS Najib will win ... but let us all* see, Tun Mahathir's bad intentions of using witnesses who were previously Najib's H officers. *But these witnesses, they not only exposed ... DS Najib believed them ... it seems they were betrayers who betrayed and conspired with Low Teck Jho or Jho Low to embezzle, to misuse power, to transfer monies, etc using the account of ...*

I (b) *We now request for all of DS Najib's trial to be stopped. The judge could already determine if this case is rubbish (kes sampah)*. The trial has proven that DS Najib is wrongly targeted, while the actual wrongdoer is Jho Low. The ones who actually embezzled and misused their powers were Nik Faisal, Amhari and also Shahrol. Up till today; we have never criticized Shahrol ...

(c) I am waiting, I have recorded everything Shahrol mentioned in court. I will collect them and file a report against Shahrol after this. We will not give the betrayers who are afraid to be imprisoned by SPRM to be a 'barua' to SPRM. *Do not create false stories to taint DS Najib Tun Razak's reputation and credibility*. These are the 3 clear issues. I challenge Ketua Polls Negara! I challenge SPRM! I challenge Latheefa Koya ... please take action! (Emphasis added.)

[14] It is the applicant's submission that the adjudication of matters related to the outcome of the trial should be left to the court to make and the respondent is not in any position to make determination of facts or evidence presented in this trial. It was submitted, therefore, that the respondent's action was a clear interference in the administration of justice.

[15] Learned counsel for the respondent, however, submitted that the applicant has attempted to expand the grounds of contempt by including the ground that the respondent had made comments which intended to influence the result of a pending trial.

[16] Learned counsel for the respondent submitted that this is because the statement filed under O 52 r 3(2) of the ROC 2012 ('statement') did not contain the allegations that the applicant had now sought to include by way of their submissions.

[17] The respondent further submits that the statement filed by the applicant was what was relied upon by this court when granting leave under O 52 of the ROC 2012 and does not contain any of the allegations in the relevant paragraphs of the applicant's written submission.

[18] It is pertinent to note that the statement, when perused, only makes reference to threats against Amhari (PW8) and other witnesses and potential witnesses who may come forward to give evidence in the 1MDB trial.

[19] The statement concludes by stating that this intimidation of witnesses constitutes an interference with due administration of justice and is, therefore, a serious contempt.

[20] The statement does not make reference to comments made by the respondent which intended to influence the result of a pending trial. O 52 r 3(2) ROC reads:

Application to Court (O 52 r 3)

3 (1) ...

A (2) An application for such leave must be made ex parte to the Court by a notice of application supported by a statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his committal is sought and by an affidavit, to be filed before the application is made, verifying the facts relied on.

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[21] The above rule makes it clear that the notice of application for leave is supported by the statement and must include the grounds relied on.

C **[22]** The affidavit only serves to verify the facts relied upon which is of course contained in the statement.

[23] The respondent in support of their submissions on this point cited the Federal court decision in *Tan Sri Dato' (Dr) Rozali Ismail & Ors v Lim Pang* D *Cheong @ George Lim & Ors* [2012] 3 MLJ 458; [2012] 2 CLJ 849 where it was held:

[37] We wish to state in clear term that the alleged act of contempt must be adequately described and particularized in detail in the statement itself. The accompanying affidavit is only to verify the facts relied in that statement It cannot E add facts to it. Any deficiency in the statement cannot be supplemented or cured by any further affidavit at a later time. The alleged contemnor must at once be given full knowledge of what charge he is facing so as to enable him to meet the charge. This must be done within the four walls of the statement itself. The same approach was taken by the Supreme Court in Arthur Lee Meng Kwang case. (See also *Syarikat* F *M Mohamed v Mahindapal Singh & Ors* [1991] 2 MLJ 112; [1991] 1 CLJ 582; [1991] 4 CLJ Rep 16.)

[24] The respondent also cited the case of *Lee Lay Ling v Goh Kim Nam (Cheah Pei Ching, co-respondent)* [2014] 8 MLJ 805; [2013] 1 LNS 1000, G where S Nantha Balan JC (as His Lordship then was) stated the following:

it is clear that for committal, the charge of contempt must be based on the grounds as set out in the statement filed pursuant to O 52 of the Rules of Court 2012 and it would be impermissible for the party applying for committal to rely on matters stated in affidavits or submissions.

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[25] It is, therefore, clear that the applicant's case of contempt stands or falls on whatever is contained within the parameters of the statement filed.

I **[26]** The reason for this is obvious and it is that the respondent is entitled to know what the allegation is against him in the clearest of terms. Otherwise the respondent will be severely prejudiced in formulating a defence or response to the allegations levelled.

[27] This requirement assumes greater significance as irrespective of whatever labelled is attached to it, it is undisputed that punishment for contempt carry possible penal consequences. It is analogous therefore to a charge in a criminal case.

[28] As the statement is akin to a charge in a criminal case, there can be no room for guesswork in matters of this nature.

[29] Therefore, for the reasons given, this expanded ground raised by the applicant cannot be entertained and is hereby dismissed.

The words uttered by the respondent constituted a threat against the witness Amhari who had given evidence in the 1MDB trial as well as future witnesses who come forward to testify at that trial

[30] This ground of complaint emanates from statements made in a police report lodged by the respondent on 25 September 2019 and statements made to the media by the respondent on the same day.

[31] The statements alleged to constitute contempt was in respect of evidence given by PW8 at the ongoing 1MDB trial. PW8 had concluded giving testimony in the trial on 23 September 2019 which was a mere two days before the said police report and statements to the media were made.

[32] The relevant excerpts of the statements made against Amhari were set out at the beginning of this judgment in para 4 and need not be repeated.

[33] The respondent's said statements in summary alleged that it was PW8 who misled the accused in the 1MDB trial and acted in collusion with one Jho Low to victimise the accused Najib.

[34] The respondent further quoted parts of the evidence adduced in court during the 1MDB trial in order to give the impression that the accused was victimised by PW8.

[35] The applicant submitted that these acts constituted intimidation of PW8 and future witnesses for the prosecution. The applicant submitted that if the respondent is allowed to harass witnesses in this manner, it will dissuade future witnesses from coming forward and testifying in court.

[36] The applicant thus submitted that this constitutes an interference with due administration of justice.

[37] The applicant cited several authorities which clearly hold that interference with the due administration of justice constitutes a contempt of court.

[38] In *Tan Sri Dato' (Dr) Rozali Ismail & Ors v Lim Pang Cheong @ George Lim & Ors* [2012] 3 MLJ 458; [2012] 2 CLJ 849, the Federal Court held as follows:

> [26] *Contempt has been reclassified* either as (1) a specific conduct of contempt for breach of a particular court order; or (2) *a more general conduct for interfering with the due administration or the course of justice*. This classification is better explained in the words of Sir Donaldson MR in *Attorney-General v Newspaper Publishing Pic* at p 362:
>
> > *Of greater assistance is the reclassification as* (a) conduct which involves a breach, or assisting in the breach, of a court order; and (b) *any other conduct which involves an interference with the due administration of justice, either in a particular case or, more generally, as a continuing process*, the first category being a special form of the latter, such inference being a characteristic common to all contempts per Lord Diplock in *Attorney-General v Leveller Magazine Ltd* [1979] AC 440 at p 449.
>
> [27] This reclassification was adopted by the Court of Appeal in *Jasa Keramat Sdn Bhd v Monatech (M) Sdn Bhd* [2001] 4 MLJ 577 (CA).
>
> [28] Hence, the law of contempt is wide enough to cover not only those who are bound by the court order, but other parties who assist the disobedience to the court order. *It was reported in Attorney General v Times Newspapers Ltd* [1973] 3 All ER 54 *that a person, who knowingly impeded or interfered with the administration of justice in an action between two other parties, was guilty of contempt of court notwithstanding that he was neither named in any order of the court nor had assisted a person against whom an order was made*. (Emphasis added.)

[39] The next case cited by the applicant was *R v Smithers and Bowen* (1983) 5 Cr App R (S) 248, where Bingham J said:

> Generally it is essential that *those who give evidence in a court of law should be protected from insults and abuse*. It is not an agreeable task to give evidence at the best of times, but it is very much more disagreeable if conduct of this kind is allowed to flourish. The *administration of justice depends on witnesses coming forward, and they must be confident in doing so that the law will protect them*. (Emphasis added.)

[40] The applicant also cited *In re Attorney-General's Application; Attorney-General v Butterworth and others* [1962] 3 WLR 819 where Lord Denning J said at pp 832–833:

> *For there can be no greater contempt than to intimidate a witness before he gives his evidence or to victimise him afterwards for having given it How can we expect a witness to give his evidence freely and frankly, as he ought to do, if he is liable, as soon as the case is over, to be punished for it by those who dislike the evidence he has given?* After he has honestly given his evidence, is he to be liable to be dismissed from his employment,

or to be expelled from his trade union, or to be deprived of his office, or to be sent to Coventry, simply because of that evidence which he has given? I decline to believe that the law of England [1962] 3 WLR 819 at 833 permits him to be so treated. *If this sort of thing could be done in a single case with impunity, the news of it would soon get round. Witnesses in other cases would be unwilling to come forward to give evidence, or, if they did come forward, they would hesitate to speak the truth, for fear of the consequences*. To those who say that there is no authority on the point, I would say that the authority of Lord Langdale MR in *Littier v Thomson* 23 is good enough for me:

> *if witnesses are in this way deterred from coming forward in aid ofiegal proceedings, it will be impossible that justice can be administered. It would be better that the doors of the courts of justice were at once closed*.

I have no hesitation in declaring that the victimisation of a witness is a contempt of court, whether done whilst the proceedings are still pending or after they have finished. Such a contempt can be punished by the court itself before which he has given evidence, and, so that those who think of doing such things may know where they stand, I would add that if the witness has been damnified by it, he may well have redress in a civil court for damages.

[41] In the same case, Donovan LJ held at p 836 the following:

> *The question to be decided here, as in all cases of alleged contempt of court, is whether the action complained of is calculated to interfere with the proper administration of justice*. There is more than one way of so interfering. The authority of a court may be lowered by scurrilous abuse. Its effectiveness to do justice may be diminished or destroyed in a pending case by frightening intending witnesses from the witness box. *After giving evidence a witness may be punished for having done so, thereby deterring potential witnesses in future cases from risking a like vengeance*.

[42] Pearson LJ in the same case also concurred as follows at p 840:

> In my judgment, however, such victimisation, because it tends to deter persons from giving evidence as witnesses in future proceedings and giving their evidence frankly and folly and without fear of consequences, is an interference with the due administration of justice as a continuing process, and does constitute contempt of court, and can be dealt with summarily under the inherent jurisdiction

[43] The applicant also cited the Indian case of *Giani Ram v Ramnath Dutt* AIR 1955 Rajashtan 123 (Vol 42, CN 35), it was held at p 127 that:

> Witnesses no less than Judges and counsel are an integral part of this process and they must be left unhampered to perform their respective duties with frankness and without interference of any kind. We have, therefore, no doubt whatever that anything which tends to impair the legitimate freedom of any of these cannot but result in obstructing the course of justice and such interference must be reprobated.

A **[44]** The authorities referred to are united in the stand that harassment and intimidation of witnesses both before and after they give evidence amounts to an interference with the administration of justice and constitutes a contempt of court.

B **[45]** An examination of the statements made in respect of PW8 will leave no doubt in the mind of the reader that the complainant has sought to place the blame on PW8 as the perpetrator of the criminal act which is the subject matter of an ongoing trial.

C **[46]** It is imperative that witnesses must be free from any form of threat or intimidation in order for them to give their evidence in a free and unimpeded manner.

D **[47]** In Butterworths Common Law Series, *The Law of Contempt*, (4th Ed) at p 362 states the position as follows:

> *The actus reus requires that the impugned behavior must create a real risk of interference with the administration of justice; the mens rea, that the putative contemnor acts with a specific intent so to interfere, or at least to engage in behavior that is inherently likely to have that effect.* The role of law of contempt in this regard is not primarily to protect the interest of individual witnesses subjected to such treatment. Rather, its purpose is to defend the public interest in the due administration of justice as a whole. (Emphasis added.)

E

F **[48]** The act of the respondent in making the said statements against PW8 in the media and in the said police report clearly gave rise to a real risk of interference with the administration of justice by constituting a threat both expressly and implicitly against PW8 for having given evidence and constituted the actus reus of contempt of court.

G

[49] It is a matter of strong and reasonable inference that the specific intention of the respondent in making those statements against PW8 was to threaten and intimidate him for having given such evidence so as to interfere with the administration of justice. In so doing his mens rea was made manifest.

H

[50] The acts on the part of the respondent will also have similar effects on prospective or future witnesses in the ongoing trial. This also amounts to a real risk of interference of justice and, therefore, constitutes the actus reus of contempt of court. It is also a matter of strong inference that the respondent acted with the specific intention of deterring potential witnesses from also giving testimony and in so doing to interfere with the administration of justice which constituted the mens rea of the offence.

I

[51] The fact that the statements made by the respondent amounts to a real risk of interference of justice also extends to deterring other witnesses from giving evidence is so notwithstanding that the statement, according to the respondent, omitted to mention other witnesses besides PW8 as the one being harassed and intimidated as this follows as a natural consequence of the respondent's act.

[52] Whether the witness is actually deterred or influenced is of no consequence. It is sufficient if the action complained of is inherently likely to so interfere which I do find to be the case here. See *R v Kellett* [1975] 3 All ER 468, cited by the respondent.

[53] This is the reason why the fact that there was no complaint or police report or affidavit filed by PW8 in respect of the statements made by the respondent, does not, as contended by learned counsel for respondent, make this application a hypothetical one.

[54] It is the very integrity of the system of administration of justice as a whole that is in issue here.

[55] The submission by learned counsel for the respondent that as far as the contents of the police report are concerned, it is subject to absolute privilege and the authority cited in support was in respect of defamation law and thus has no application on the facts here. See *Noor Azman bin Azemi v Zahida bt Mohamed Rafik* [2019] 3 MLJ 141; [2019] 3 CLJ 295, cited by learned counsel for the respondent.

[56] The fact that the respondent was a political personality and was merely publicising the police report as it related to matters of public interest does not exonerate or absolve him.

[57] The fact that the respondent allegedly wanted the investigative authorities to take action by lodging of the police report also does not amount to a defence. Viewed in its proper circumstantial context, the statements were calculated to threaten PW8 for having given evidence against the accused in the ongoing 1MDB trial and had the effect of deterring prospective witnesses from testifying in a like manner.

[58] It is also not the place nor the province of the respondent to say that the acts were undertaken to ensure the evidence given by witnesses in the 1MDB trial were truthful and honest in the interest of the administration of justice.

A **[59]** It is not the business of the respondent to ensure that witnesses tell the truth. There are sanctions and remedies inherent in the administration of justice by the courts to address these concerns.

B **[60]** I, therefore, find that the intention of the respondent in making those statements was to threaten PW8 for having testified in the manner that he did and not because he wanted the authorities to investigate PW8. Mala fide, therefore, on the part of the respondent can be reasonably inferred.

C **[61]** With regard to the issue raised by learned counsel for the respondent that the specific or particular words that intimidated PW8 were never stated in the statement, both the media transcript and the police report were referred to in the statement as exh A1 and A2 respectively. If there was any doubt at all as to what were the offending portions, even a cursory examination of these
D exhibits would have resolved it.

[62] In any event, the respondent was undoubtedly possessed with such knowledge because he himself had made these statements by way of a police report and repeated some portions of it to the media.

E

[63] In addition, the respondent was represented by able counsel whose advice he could and undoubtedly would have sought if he at all had entertained even a glimmer of a doubt as to what were the offending portions.

F

[64] So, there was no question of any ambiguity or hazarding a guess as to what the offending portions were on the part of the respondent.

[65] Based upon the authorities referred to above and the reasons given, I
G find that the act of the respondent accompanied with the specific intent in making the said statements in the media and in the police report amounts to intimidation and threats against PW8 and also to prospective and future witnesses in the ongoing trial giving rise to a real risk of interference with the due administration of justice and constituted a contempt of court.

H

[66] This court, therefore, finds the respondent guilty of contempt of court and accordingly convict him of the said contempt.

SENTENCE

I

[67] Learned counsel for the respondent in mitigation submitted that the respondent was entitled to place reliance upon cases as *Noor Azman Azemi v Zahida Mohd Rafik* by the Federal Court in lodging the police report.

[68] That case held that a police report is absolutely privileged. A

[69] It was also submitted that Amhari (PW8) nor anyone else had either lodged a police report or affirmed any affidavit concerning the statements made by the respondent. B

[70] Consequently, it was argued that no real harm was occasioned so as to threaten the administration of justice.

[71] It was contended that the statements made about PW8 was personal to him and cannot be made to generally apply to anyone else. C

[72] Counsel for the respondent cited O 52 r 7 of the Rules of Court 2012 and argued that the court can suspend any order of committal for such period or on terms deemed fit. D

[73] Learned counsel for the respondent urged the court in the alternative to invoke O 52 r 8 of the ROC and discharge the respondent.

[74] It was finally submitted that the respondent was a first offender and, therefore, should not be subject to a custodial sentence but that a fine would suffice. E

[75] The learned deputy public prosecutor (DPP) submitted that the respondent had shown no remorse and was defiant. F

[76] The DPP submitted that the case of *Noor Azman Azemi v Zahida Mohamed Rafik* had two limbs and that the second limb is where after lodging a police report, it is then repeated to the media, in which case absolute privilege would not attach. G

[77] The learned DPP cited, inter alia, the cases of *R v Jason Wedlock* (1995) WL 1084345 and *R v Smithers and Bowen* where varying periods of imprisonment was meted out in support of imposing a custodial sentence. H

[78] The DPP also pointed out that the respondent was not an uneducated man and that he knew what he was doing when he made those statements.

[79] It was submitted that a custodial sentence would act as deterrent and be a source of comfort to future witnesses. I

A **[80]** Learned counsel for the respondent in a counter-reply pointed out that the cases relied upon by the applicant involved some form of physical act or threat of physical act or threat of physical harm unlike this case.

B **[81]** Notwithstanding, interference with the administration of justice is of a serious nature. Here, it involved a witness who had given testimony.

[82] The witness, PW8 was threatened with giving evidence against the accused.

C **[83]** The effect of the statements made by the respondent also gave rise to a real risk of impeding or deterring future witnesses from giving evidence in a like manner.

D **[84]** This interference with the due administration of justice cannot be taken lightly. Courts must sanction such action with the punishment it deserves to reflect its abhorrence of such conduct and to act as deterrent to would be offenders.

E **[85]** The respondent also displayed no remorse and was unrepentant which was an aggravating factor.

[86] Considering all the circumstances, this court imposed a sentence of imprisonment of one month from date of conviction.

F **[87]** This court, however, allowed an application for a stay of sentence pending appeal on condition that the notice of appeal be filed within the stipulated time and the additional condition of one surety with a bond in the sum of RM3,000.

G *Respondent convicted; respondent sentenced to month imprisonment; application for stay of sentence pending appeal allowed.*

Reported by Dzulqarnain Ab Fatar

H

I